

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROOCHI TRADERS INCORPORATED,

Plaintiff,

Civ. Act. No: 08 CV 3544 (WHP)

- against -

**MEMORANDUM OF LAW IN
OPPOSITION TO
PLAINTIFF'S ORDER TO
SHOW CAUSE**

TIP TOP TEES INC., GLAMOUR LINE INC.,
GLAMOUR (USA), INC., ALPHA
MERCHANDISING CORP., ROSE DEAL, INC.,
HARYASH PAUL, MOHAMMED RAHMAN,
MOHAMMED FAROQUE, JOHN DOES1-10,
JANE DOES 1-10, and XYZ COMPANIES 1-10,
Defendants.

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Defendants TIP TOP TEES INC., GLAMOUR LINE INC., ALPHA
MERCHANDISING CORP., and HARYASH PAUL (hereinafter simply "Paul Haryash"),
collectively hereinafter simply "Paul-Defendants", submit the following in opposition to
Plaintiff's Order to Show Cause. Plaintiff has initially alleged that Defendants have sold
counterfeit T-shirts, bearing the Plaintiff's trademark COTTON HERITAGE. Defendants allege
that such T-shirts are genuine and that the temporary restraining order granted pursuant to 15
USC § 1116(d) is not warranted.

1. In *El Greco* upon which Plaintiff relies heavily, the District Court upon remand
found that even if the goods were not authorized, the Plaintiff was simply entitled to an
injunction and was not entitled to any damages. The Court made specific reference to the
Lanham Act requirement of a showing of infringement "with the deliberate intent to cause
confusion, mistake or to deceive purchasers" and just as in this case, the allegedly infringing
goods were manufactured by a company under contract with the trademark holder (*El Greco
Leather Products Co., Inc., v. Shoe World, Inc.*, 726 F.Supp. 25 (E.D.N.Y., 1989)). In this case,
Plaintiff has already seized all of the allegedly infringing T-shirts and has offered proof that the

T-shirts were originally authorized. Plaintiff will not be able to show any damages resulting from the sale of T-shirts ordered pursuant to Plaintiff's specifications from a manufacturer that they had previously ordered T-shirts from in the past and from whom they continued to order T-shirts.

2. The Third Circuit Court of Appeals relying in part on *El Greco*, determined that any trademark owner attempting to use §32, bringing an infringement action has the burden of establishing that the alleged counterfeit products being sold are not genuine and furthermore that if there are no "material differences" between the products then the action brought under the Lanham Act must fail (*Iberia Foods Corp. v. Romeo*, 150 F.3d 298, 302-03 (3d Cir.1998)). The reason for this test is clear. If the consumer is getting what they believed that they were getting, then there was no harm to the trademark. The purpose of the Lanham Act is not to act as a remedy in a contract dispute between a manufacturer and a trademark owner, the purpose is to protect the value of the trademark itself.

3. In this case, Plaintiff has admitted that the goods in question were originally ordered by Plaintiff. Plaintiff was still ordering clothing from Humatnoor/Factory 8 after the alleged cancellation of purchase order 1927, and cannot therefore complain that the 1927 T-shirts were in any way different from those other shirts manufactured in the same factory. Plaintiff cannot claim that the T-shirts were rejected because of any "material difference" because Sajid Ali has already stated that the T-shirts produced under purchase order 1927 were never seen by Plaintiff.

4. When the Court considers both *El Greco* and *Iberia Foods*, the only logical conclusion is for the Court to discharge the restraining order as Plaintiff cannot prove any damages. Paul-Defendants respectfully requests that this Court discharge the Temporary

Restraining Order that is currently restraining all of the Paul-Defendants assets, deny all other relief sought by Plaintiff herein, and grant such other and further relief as the Court finds just and proper.

Dated: New York, New York
May 5, 2008

S/
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